IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.M.JOSEPH

MONDAY, THE 18TH JUNE 2007 / 28TH JYAISHTA 1929

WP(C).No. 18293 of 2007(C)

---

PETITIONER:

---

A.S. SALIM, AGED 45 YEARS,
S/O. SAINUDHEEN, AWD IX RATION WHOLESALE DEALER,
ANCHAL, PATHANAPURAM TALUK.

BY ADV. SRI.VARGHESE C.KURIAKOSE
SRI.PRAVEEN K. JOY

RESPONDENTS:

---

1. DISTRICT COLLECTOR, KOLLAM.

2. TALUK SUPPLY OFFICER,
PATHANAPURAM, PUNALUR.

3. ANCHAL GRAMA PANCHAYAT,
REP. BY ITS SECRETARY, ANCHAL, KOLLAM.

R1 & R2 BY GOVT. PLEADER SRI. MOHAMMED ANZAR.
R3 BY ADV. SRI.C.J.JOY
SMT.SHOBA NAIR

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 18/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

**K.M.JOSEPH, J.**

- - - - - - - - - - - - - - - - - - - - - - - -

WP.(C) No.18293 of 2007

- - - - - - - - - - - - - - - - - - - - - - - -

Dated this the 18th day of June, 2007

**JUDGMENT**

Heard counsel for the petitioner, learned Government Pleader and the learned counsel for the Panchayat. The prayers sought is to declare that the action of the third respondent in closing the public way, without any notice or intimation to the petitioner and without granting any reasonable time as illegal and arbitrary. Direction is also sought to the third respondent to open the way towards the petitioner's ration dealer depot and direct the third respondent to implement Ext.P5. The further direction sought is to consider Ext.P5. Case of the petitioner in brief is that petitioner is conducting a wholesale ration depot within the limit of the third respondent from 1996 and the licence is renewed upto to 31.3.2008. Panchayat authority has without notice closed down the public way used for ingress of the vehicle. The distribution of the ration goods, if obstructed, will directly affect the supply of goods in the market is the case of the petitioner. It is stated that stock for more than Rs.3 Lakhs is kept in the building of the petitioner, which is not

able to be removed because of the stand of the third respondent. The second respondent has already issued an order in favour of the petitioner, it is pointed out.

2. Learned counsel appearing on behalf of the respondents submits that what all the Panchayat has done is to comply with the direction of the Council. It is submitted that the petitioner has no right as such.

3. Learned counsel for the petitioner submits that petitioner will vacate the premises within one month from today. He prays that the petitioner may be permitted to demolish the wall for the purpose of widening so that he has ingress into his shop and he submits that he will, after so using it for a month from today as aforesaid, restore it back to the present position as on today. It will be done at his own expense. Learned counsel for the Panchayat submits that the Panchayat is amenable if the petitioner abides by the said conditions and further also that the petitioner should relinquish his claim as alleged and gives all this in the form of an undertaking to the third respondent. Learned counsel for the Panchayat submits that the petitioner has already filed a

civil suit in the Munsiff's Court, Punalur with regard to the same matter. Learned counsel for the petitioner submits that if such a suit is filed, it will be withdrawn. Petitioner will also include in his undertaking to be given to the third respondent that he will withdraw the civil suit, if any filed, before he proceeds to carry out the demolition.

In such circumstances, the writ petition is disposed of as follows:

If the petitioner gives a written undertaking to the third respondent stating that he will vacate the shop in question within one month from today (18.6.2007) and he will restore back the construction made by the third respondent as it exists today after demolishing it for widening, so as to have ingress of vehicle to his shop at his expense, the petitioner shall be permitted to demolish the construction made as evident in Ext.P7 for the purpose of getting ingress into and egress from his shop for a period of one month from 18.6.2007. He will also given an undertaking to the third respondent that he relinquishes his claim over the pathway. In the undertaking the petitioner must say that the demolition and the restoration will be done at his expense. The third

respondent need permit the petitioner to demolish the wall at his expense only after the petitioner files an application for unconditionally withdrawing the suit, if any filed before the Munsiff's Court, Punalur.

(K.M. JOSEPH, JUDGE)

sb